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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 13 2006

at 11 o'clock and 53 min P.M.
SUE BEITIA, CLERK

Attorney for Defendant
ERIC K. HO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA)	CR. NO. 05-00027 JMS-02
)	
vs.)	
)	
ERIC K. HO (02),)	STATEMENT OF OBJECTIONS TO
)	THE DRAFT PRESENTENCE
Defendant.)	REPORT; EXHIBIT "A"; and
)	CERTIFICATE OF SERVICE
)	
)	
)	
)	

STATEMENT OF OBJECTIONS TO THE DRAFT PRESENTENCE REPORT

COMES NOW Defendant ERIC K. HO, (hereinafter "Defendant HO"), by and through counsel, Craig T. Kimsel, and hereby states his objections to the draft Presentence Investigation Report (hereinafter "Draft Report") in the above entitled matter:

1. At paragraphs 38 & 40, the Draft Report lists State of Hawaii convictions for Burglary in the First Degree in CR. NOS. 91-1080 & 91-0765, presided over by the Honorable Dexter D. Del Rosario, with conviction dates of 10/17/1991, which appear

EXHIBIT F

SEALED BY ORDER OF THE COURT

on the Draft Report as still outstanding until 04/07/2008, when in fact HO'S liability in those cases terminated no later than December 15, 2004.

- a. On January 20, 1999, the Circuit Court of the First Circuit, the Honorable Dexter D. Del Rosario, judge presiding, revoked HO'S probation, and resentenced HO to a term of incarceration not to exceed ten (10) years in both cases.¹
 - i. Had this been the final proceeding in the matter, then the Draft Report would be correct, and HO'S liability in both cases would have remained outstanding until 03/18/2008.
- b. However, the Draft Report fails to account for the Motion for Reconsideration of Sentence granted by the Honorable Dexter D. Del Rosario on December 15, 1999, placing HO back on five (5) years probation.²
- c. Therefore, in CR. NOS. 91-0-0765 & 91-0-1080, even without the credit for time served from January 20, 1999 to December 15, 1999³, HO'S liability in these cases expired no later than December 15, 1994.⁴

¹ See minutes of proceedings in the Circuit Court of the First Circuit, the Honorable Dexter D. Del Rosario, judge presiding, on January 20, 1999, in CR. NOS. 91-0-0765 & 91-0-1080, attached hereto as Exhibits "A" & "B", respectively.

² See minutes of proceedings on December 15, 1999, in the Circuit Court of the First Circuit, the Honorable Dexter D. Del Rosario, judge presiding, granting HO'S Motion for Reconsideration and replacing HO on five (5) years probation , in CR. NOS. 91-0-0765 & 91-0-1080, attached hereto as Exhibits "C" & "D", respectively.

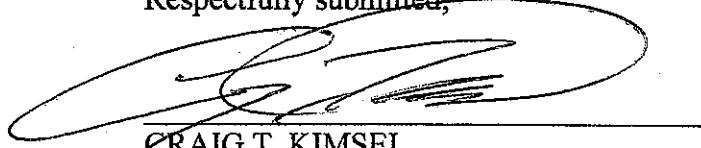
³ HO should be given credit against the five (5) year probationary term given on December 15, 1999 for that time period between January 20, 1999, and December 15, 1999, in that the motion for reconsideration heard and granted on December 15, 1999 was a reconsideration of the January 20,

Therefore, the Draft Report's representation in paragraphs 38 & 40 that Defendant HO was paroled on 02/03/2000 and that his parole was revoked on 08/31/2005 in each of the two cases is incorrect, as Defendant HO was placed on probation by the Circuit Court on December 15, 1999 for 5 years, which terms ended at the latest on December 15, 2004, which date is before the "revocation" date of 08/31/2005, and the earliest known date for which relevant conduct in the instant offense took place of January 3, 2005.

2. Defendant HO notes that a cooperation agreement was entered into with the United States which has the sole discretion of whether to file a Motion for Downward Departure.

Dated: Honolulu, Hawaii, January 13, 2006.

Respectfully submitted,



CRAIG T. KIMSEL
Attorney for Defendant
ERIC M. HO

1999 order of re-sentencing, and therefore it is implied that the probationary term of five (5) years should run *nunc pro tunc* to the original January 20, 1999 re-sentencing date.

⁴ Counsel would note for the Court that HO'S arrest which led to his instant charges did not occur until after the December 15, 2004 ending of liability, on January 3, 2005.



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Court Minutes Text

1PC91-1080
Party Seq

Party Name: HO, ERIC K

Div.: 1C13 **CR Date:** 01-20-1999

Time: 0930A

Priority: 3

Judge I.D.: JDDELROSAR

Video No.:

Audio No.:

Minutes: REPORTER: S. HULIHEE; CLERK: S. QUON

9:39 CASE CALLED. APPEARANCES NOTED BY COUNSEL
DPA P. MARRACK, DPD J. FONSECA & DEFT WERE
PRESENT.

COURT TOOK JUDICIAL NOTICE OF REC/FILES.
COUNSEL STIPULATED TO ID OF DEFT; THAT HE
WAS RESENTENCED TO PROBATION & RECEIVED T/C OF

PROBATION; THAT HE VIOLATED T/C AS DESCRIBED
IN VIOLATION RPT BY PO.

COURT VOIR DURED DEFT RE STIPULATION.
COURT ACCEPTED STIPULATION OF COUNSEL. BASED
ON STIPULATION CT FOUND DEFT VIOLATED T/C OF

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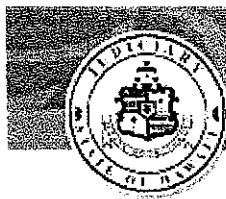
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Date](#)

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Exhibit A



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Court Minutes Text

1PC91-1080

Party Seq

Party Name: HO, ERIC K

Cal. Key: 1C13 **CR Date:** 01-20-1999

Time: 0930A

Priority: 3

Judge I.D.: JDDELROSAI

Video No.:

Audio No.:

Minutes: PROBATION & ACCORDINGLY GRANTED MTN F/REVO.

ARGUMENTS BY STATE FOR INCARCERATION.

ARGUMENTS BY FONSECA. FONSECA SUBMITTED LTR

BY DR. TWENTYMAN DATED 1/14/99. CT MADE LTR

PART OF RCD.

9:51 DEFT ADDRESSED THE COURT. COURT QUERIED

DEFT.

10:02-10:13 RECESSED/RECONVENED.

COURT HAVE CHAMBER CONF W/ATTYS & PO TO
DISCUSS CT'S PLAN.

COURT ADDRESSED DEFT W/ITS CONCERNs.

JUDGMENT & SENTENCED: DEFT COMMITTED TO THE

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Court Minutes Text

1PC91-1080

Party Seq

Party Name: HO, ERIC K

Cal. Key: 1C13 **CR Date:** 01-20-1999

Time: 0930A

Priority: 3

Judge I.D.: JDDELROSAI

Video No.:

Audio No.:

Minutes: CUSTODY OF PUBLIC SAFETY FOR A PERIOD OF 10 YRS
JAIL CONFINEMENT IN CR. NOS. 91-1080 & 91-0765
TO RUN CONCURRENTLY W/EACH OTHER.
COURT WILL GIVEN FONSECA LEAVE TO FILE A
MTN F/RECON OF SENTENCING. COURT WANTS DEFT
TO CREATE A GOOD TRACK RECORD WHILE INCARCERATED

I.E. TAKE CLASSES, GET ON WORK LINE, ETC.
SHOULD DEFT PROVE HIMSELF TO THE COURT THE
COURT WILL RECONSIDER ITS SENTENCES.
10:23 ADJOURNED.

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Party Seq

Party Name: HO, ERICK M K

Div.: 1C13 **CR Date:** 01-20-1999

Time: 0930A

Priority: 3

Judge I.D.: JDDELROSAR

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COURT ACCEPTED STIPULATION OF COUNSEL. BASED
ON STIPULATION CT FOUND DEFT VIOLATED T/C OF

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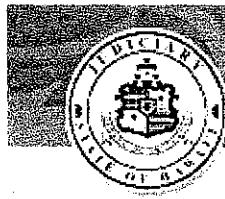
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Exhibit - B"



Hawai'i State Judiciary Ho`ohiki

Case Number: 1C13 Date: 01-20-1999

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1PC91-
Party Seq

Party Name: HO, ERICK M K

Cal. Key: 1C13 **CR Date:** 01-20-1999

Time: 0930A

Priority: 3

Judge I.D.: JDDELROSAI

Video No.:

Audio No.:

Minutes: PROBATION & ACCORDINGLY GRANTED MTN F/REVO.
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ARGUMENTS BY FONSECA. FONSECA SUBMITTED LTR

BY DR. TWENTYMAN DATED 1/14/99. CT MADE LTR
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COURT HAVE CHAMBER CONF W/ATTYS & PO TO
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COURT ADDRESSED DEFT W/ITS CONCERNs.
JUDGMENT & SENTENCED: DEFT COMMITTED TO THE

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1PC91-
Party Seq

Party Name: HO, ERICK M K

Cal. Key: 1C13 **CR Date:** 01-20-1999

Time: 0930A

Priority: 3

Judge I.D.: JDDELROSAI

Video No.:

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Minutes: CUSTODY OF PUBLIC SAFETY FOR A PERIOD OF 10 YRS
JAIL CONFINEMENT IN CR. NOS. 91-1080 & 91-0765
TO RUN CONCURRENTLY W/EACH OTHER.
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I.E. TAKE CLASSES, GET ON WORK LINE, ETC.
SHOULD DEFT PROVE HIMSELF TO THE COURT THE
COURT WILL RECONSIDER ITS SENTENCES.
10:23 ADJOURNED.

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1PC91-1080
Party Seq

Party Name: HO, ERIC K

Div.: 1C13 **CR Date:** 12-15-1999

Time: 0830A

Priority: 1

Judge I.D.: JDDELROSAR

Video No.:

Audio No.:

Minutes: COURT REPORTER: M. DAVIDSON***CLERK: T. GOODALL

8:34AM CONVENED W/DPA P. MARRACK & J. FONSECA F/DFT. CT WAIVED DFT'S PRESENCE (DFT INCARCERATE IN MINNESOTA).

COUNSEL PRESENTED ARGUMENTS.

CT TAKES JUDICIAL NOTICE OF RECORDS & FILES & REVIEWED PSI & VIOLATION REPORTS. AT MTN FOR REVOCATION HELD 1/20/1999, CT GAVE DEFENSE LEAVE TO FILE MTN FOR RECON & INFORMED DFT BECUZ OF NUMEROUS VIOLATIONS, CT FELT DFT HAD TO ESTABLIS TRACK RECORD. CT REVIEWED EXHIBITS 1-6 BY DEFENS DFT HAS DONE WELL AND CT IS IMPRESSED.

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Exhibit C

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Party Seq

Party Name: HO, ERIC K

Cal. Key: 1C13 **CR Date:** 12-15-1999

Time: 0830A

Priority: 1

Judge I.D.: JDDELROSAI

Video No.:

Audio No.:

Minutes: CT GRANTS MOTION.

J&S: DFT PLACED ON NEW TERM OF 5 YEARS PROBATION
SUBJECT TO SPECIAL TERMS & CONDITIONS OF PROB:
A) FOLLOW ALL REASONABLE INSTRUCTIONS BY PO;
B) NOT OWN OR POSSESS ANY FIREARMS, ETC.; C)
SERVE A TERM OF IMPRISONMENT OF ONE YEAR W/CREDI
FOR TIME SERVED; D) OBTAIN SUBSTANCE ABUSE TRMT
AT OWN EXPENSE; E) WORK FULL TIME OR ATTEND
EDUCATIONAL/VOCATIONAL TRAINING...; F) OBTAIN
MENTAL HEALTH TRMT & REMAIN UNTIL DISCHARGED AT
OWN EXPENSE; G) NOT POSSESS ALCOHOL OR DRUGS...H
SUBMIT TO DRUG TESTING AT OWN EXPENSE...I) SUBMI

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Hawai'i State Judiciary Ho'ohiki

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Party Seq

Party Name: HO, ERIC K

Cal. Key: 1C13 **CR Date:** 12-15-1999 **Time:** 0830A **Priority:** 1 **Judge I.D.:** JDDELROSAI

Video No.:

Audio No.:

Minutes: TO SEARCH OF PERSON...J) SIGN WAIVER OF EXTRADITION.
DEFENSE TO PREPARE ORDER.
8:44AM CONCLUDED.

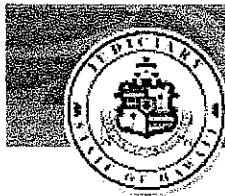
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Party Seq

Party Name: HO, ERICK M K

Div.: 1C13 **CR Date:** 12-15-1999

Time: 0830A

Priority: 1

Judge I.D.: JDDELROSAR

Video No.:

Audio No.:

Minutes: COURT REPORTER: M. DAVIDSON****CLERK: T. GOODALL

8:34AM CONVENED W/DPA P. MARRACK & J. FONSECA
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NUMEROUS VIOLATIONS, CT FELT DFT HAD TO ESTABLISH
TRACK RECORD. CT REVIEWED EXHIBITS 1-6 BY DEFENS
DFT HAS DONE WELL AND CT IS IMPRESSED.

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Exhibit "D"

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Party Seq

Party Name: HO, ERICK M K

Cal. Key: 1C13 CR Date: 12-15-1999

Time: 0830A Priority: 1 Judge I.D.: JDDELROSAI

Video No.:

Audio No.:

Minutes: CT GRANTS MOTION.

J&S: DFT PLACED ON NEW TERM OF 5 YEARS PROBATION
SUBJECT TO SPECIAL TERMS & CONDITIONS OF PROB:
A) FOLLOW ALL REASONABLE INSTRUCTIONS BY PO;
B) NOT OWN OR POSSESS ANY FIREARMS, ETC.; C)
SERVE A TERM OF IMPRISONMENT OF ONE YEAR W/CREDI
FOR TIME SERVED; D) OBTAIN SUBSTANCE ABUSE TRMT
AT OWN EXPENSE; E) WORK FULL TIME OR ATTEND
EDUCATIONAL/VOCATIONAL TRAINING...; F) OBTAIN
MENTAL HEALTH TRMT & REMAIN UNTIL DISCHARGED AT
OWN EXPENSE; G) NOT POSSESS ALCOHOL OR DRUGS...H
SUBMIT TO DRUG TESTING AT OWN EXPENSE...I) SUBMI

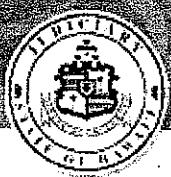
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Date

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Hawai'i State Judiciary Ho'obiki

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Court Minutes Text

1PC91-
Party Seq

Party Name: HO, ERICK M K

Cal. Key: 1C13 **CR Date:** 12-15-1999 **Time:** 0830A **Priority:** 1 **Judge I.D.:** JDDELROSAI

Video No.:

Audio No.:

Minutes: TO SEARCH OF PERSON...J) SIGN WAIVER OF EXTRADITION.

DEFENSE TO PREPARE ORDER.
8:44AM CONCLUDED.

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**IN THE UNITED STATES DISTRICT CIRCUIT
FOR THE DISTRICT OF HAWAII**

I hereby certify that the foregoing document shall be duly delivered to the following persons on the date of filing herein:

TO: MR. MARK A. INCIONG, ESQ.
Assistant United States Attorney
Office of the United States Attorney
300 Ala Moana Blvd., Room 6-100
Honolulu, Hawaii 96850

MS. ROSANNE T. DONOHOE
United States Probation Officer
United States District Court for the District of Hawaii
Ground Floor
Honolulu, Hawaii 96850

DATED: Honolulu, Hawaii, January 13, 2006.

~~CRAIG T. KIMSEL
Attorney for Defendant
ERIC M. HO~~